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No. 445

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

JAMES H. COOGAN,

Petitioner,

vs.

CINCINNATI BAR ASSOCIATION,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

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INDEX

	Page
STATEMENT OF FACTS	1
ARGUMENT	4
CONCLUSION	7

AUTHORITIES

Cases Cited:

Cincinnati Bar Association v. Coogan, 21 Ohio St. 2d 147 4

United States v. Barracota, 45 Fed. Supp. 38 (DC-NY) 6

Other Authorities:

Rule 23(1)(d), Rules of The Supreme Court of the United States 5

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STATEMENT OF FACTS

This action involves a disbarment proceeding which arose out of complaints initiated against the Petitioner, James H. Coogan, an attorney at law in the State of Ohio, which complaints were lodged with the Cincinnati Bar Association, Respondent herein.

As a result of these complaints, the Grievance Committee of the Cincinnati Bar Association undertook investigation of the charges against Mr. Coogan. Ultimately, pursuant to the direction of The Supreme Court of Ohio, a hearing was held before a panel of Commissioners of the Board of Commissioners on Grievances and Discipline of The Supreme Court of Ohio.

The Board of Commisisoners on Grievances and Discipline had appointed a three man panel to hear the complaints against Mr. Coogan and this hearing was scheduled for 9:00 A.M. on July 8, 1969. Any continuation of proceedings prior to that hearing date are well explained in the Findings of Fact and Recommendation of the Board of Commissioners on Grievances and Discipline of The Supreme Court of Ohio (Appendix C, pages 20 and 21 of Mr. Coogan's Petition for Writ of Certiorari). The Cincinnati Bar Association never agreed to dismiss the complaints against Mr. Coogan.

It is clear from the record that the Petitioner was aware of the hearing on July 8, 1969, as he had talked with his counsel concerning the hearing (R. 119), and one of counsel for Respondent, Mr. Wirthlin, had discussed the case with Mr. Coogan's attorney prior to that hearing.

Mr. Coogan failed to appear at the hearing and the hearing was delayed to give Mr. Puttick, Mr. Coogan's counsel, ample opportunity to contact Mr. Coogan (R. 4 through 8).

The complaints involving Mr. Coogan which were the subject of the hearing on July 8, 1969, were twofold. One complaint arose due to Mr. Coogan's actions as attorney in the Estate of Clara Davis, a Guardianship in which one Mr. Costello was appointed Guardian on August 10, 1966. On September 7, 1966, less than a month later, and five days after the guardianship inventory was filed, Mr. Coogan had a fee set of $7,500.00 for the Guardian and $7,500.00 for himself. Payment of $5,000.00 each was made to the Guardian and to Mr. Coogan as attorney from guardianship funds. Ultimately, the Guardian was required to return $2,500.00 of his fee and also return an additional $1,500.00 of his own funds because Mr. Coogan's

fee was later reduced to $500.00 (R. 49 and 19) and Mr. Coogan failed to return any part of his fee to the guardianship.

The second complaint involved an eviction action wherein Mr. Coogan had been retained by Mr. Halas to represent him in the defense of that eviction suit. Mr. Halas had been assured by Mr. Coogan that he had filed a Motion to Set Aside the Judgment on Mr. Halas' behalf, so as to stop proceedings in the eviction suit. The evidence is clear that Mr. Coogan never filed anything in this case and, as a result, Mr. Halas and his family were forcibly evicted and their possessions physically removed from the premises. Mr. Halas had to seek other shelter and place his children in different schools.

The Petitioner herein never appeared for any part of the hearing on July 8, 1969, and, at the noon recess, his counsel attempted again to contact him (R. 122). An opportunity was given to counsel to file briefs and/or to take depositions, and the matter was taken under advisement. No briefs were filed by counsel for Mr. Coogan, nor by Mr. Coogan himself, who, incidentally, had prepared and filed his own answer to the original complaints.

The Board of Commissioners on Grievances and Discipline found sufficient evidence on both charges of misconduct to recommend that Petitioner be indefinitely suspended from the practice of law. That recommendation was then set on the docket of The Supreme Court of Ohio for January 21, 1970, by issuing an order to Mr. Coogan to show cause why he should not be suspended from the practice of law. Again, Mr. Coogan failed to appear, this time failing to appear before The Supreme Court of Ohio. The Supreme Court of Ohio adopted the recommendation of the Board of Commissioners on Grievances and Discipline and ordered that Mr. Coogan be indefinite-

ly suspended from the practice of law. (*Cincinnati Bar Association* v. *Coogan*, 21 Ohio St. 2d 147).

A motion for rehearing was filed but was overruled by The Supreme Court of Ohio.

ARGUMENT

This matter involving Mr. Coogan has had a consistent pattern of Mr. Coogan's failure to face up to the issues when presented.

He failed to appear at his own hearing before the panel constituted by the Board of Commissioners on Grievances and Discipline of The Supreme Court of Ohio. The hearing on July 8, 1969, was delayed to give Mr. Coogan's counsel opportunity to locate Mr. Coogan. At noontime recess, attempts were made by Mr. Coogan's counsel to locate him. The Record, page 105 et seq. is clear that Mr. Coogan knew of the hearing but failed to appear. In fact Mr. Coogan's counsel at the hearing indicated that "Mr. Coogan expressed himself that he did not know whether he wanted counsel here." (R. 7.)

Mr. Coogan failed to appear at the hearing before The Supreme Court of Ohio.

Mr. Coogan had failed to respond to the attempted contacts by the Guardian, Mr. Costello. He had failed to respond to the contacts attempted by Mr. Halas in the eviction case. He had failed to respond to the request of the Probate Court Judge to meet with him to discuss the question of the fees in the Clara Davis Guardianship (R. 34).

Where was Mr. Coogan at the critical junctions: when Judge Davies tried to reach him, when Mr. Costello had to pay back $4,500.00 of his own funds, when Mr. Halas was being evicted from his home with his family and all

his possessions, when his license to practice law was in danger at the hearing before the Board of Commissioners, when his license to practice law was in danger before The Supreme Court of Ohio? He was never there.

Mr. Coogan now seeks to invoke the time and jurisdiction of this Court by petitioning for a Writ of Certiorari.

Rule 23 (1) (f) of this Court requires that the Petitioner in his Petition for Writ of Certiorari shall specify the stage in the proceedings in the court of first instance and in the appellate court, at which, and the manner in which, the federal questions sought to be reviewed were raised, as will show that the federal question was timely and properly raised so as to give this Court jurisdiction to review the judgment. Petitioner has failed to comply with this requirement. He is unable to do so because the question of double jeopardy and the use of Mr. Hunt's affidavit were never raised in the proceedings.

The matter of the alleged agreement by the Cincinnati Bar Association to accept a six month suspension of Mr. Coogan's license was brought out by one of the Bar Association's own attorneys, Mr. Wirthlin, and there is reference to it in the record of the hearing (R. 111). There is no doubt that the panel had the opportunity to question Mr. Wirthlin and Mr. Coogan's counsel, Mr. Putnick, concerning any phase of the alleged agreement, but it did not do so and Mr. Coogan's counsel had ample opportunity to cross-examine Mr. Wirthlin because Mr. Wirthlin was on the witness stand. In closing argument at the hearing, not one word was said about this alleged agreement. No briefs were filed by Mr. Coogan nor by his counsel. Nothing was ever urged about "double jeopardy." The Cincinnati Bar Association did not enter any agreement to dismiss the complaints.

The affidavit of Lawrence Hunt, to which Petitioner now refers, was admitted by the panel ". . . for whatever value it may have in our deliberations," (R. 105). Mr. Coogan's counsel did not object to the admission of the affidavit, although Chairman Atkinson of the panel voluntarily stated that the objection of counsel would be noted.

Judge Davies, the Probate Judge of Hamilton County, was on the witness stand and testified extensively concerning the Clara Davis Guardianship and he testified concerning Mr. Hunt, his referee. Mr. Coogan, through his counsel, had ample opportunity to cross-examine Judge Davies or to question Judge Davies concerning Mr. Hunt and/or Mr. Hunt's affidavit, but not one word of cross-examination was made of Judge Davies in any way touching on Mr. Hunt or the affidavit. If Mr. Hunt had appeared in flesh and blood on the witness stand on July 8, 1969, Mr. Coogan was not even there to observe him, much less cross-examine him. The very case cited by Petitioner in his brief, *United States* v. *Barracota*, 45 Fed. Supp. 38 (D.C. N.Y.), says that "By voluntarily absenting himself from the courtroom the defendant Barracota waived his right to be present at the trial and to be confronted with witnesses against him." The records of the Probate Court in the Clara Davis Guardianship were admitted into evidence and speak for themselves.

The fact is that there was overwhelming and sufficient evidence to prove Mr. Coogan's misconduct in the Clara Davis Guardianship separate and apart from any affidavit by Mr. Hunt. The fact remains, moreover, that there was overwhelming and sufficient evidence to prove Mr. Coogan's misconduct on the other complaint; to wit, the Halas eviction case. The essence of Mr. Coogan's misconduct in his representation of Mr. Halas is well set

forth in the Findings of Fact and Recommendation of the Board of Commissioners on Grievances and Discipline of The Supreme Court of Ohio. (Appendix C, p. 24, Petition for Writ of Certiorari, herein.)

CONCLUSION

Mr. Coogan, the Petitioner herein, has not only had his day in Court, he has had his days in Court, including a hearing in the United States District Court for the Southern District of Ohio, Western Division (Case 7526), wherein the Court dismissed Mr. Coogan's complaint. He has also filed in The Supreme Court of Ohio a Petition for Leave to File Motion for Rehearing. The matter is also in the United States Court of Appeals for the Sixth Circuit. The record in this case is replete with a pattern of Mr. Coogan's failing to appear at critical times, not only in his law practice, but in proceedings which were instituted to determine his qualifications to practice law.

Petitioner raises issues which are tenuous and of no substance.

It is respectfully submitted that the Petition for Writ of Certiorari to The Supreme Court of Ohio be denied.

Respectfully submitted,

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